Setting up a tax practice

A useful guide

4. Legal structure

The choices available in deciding the legal form of your business are:

1 Operate as a sole trader
2 Set up as a partnership with another person where both partners work together and split the profit / losses according to their profit sharing ratios
3 Incorporate a limited liability company that will have a legal identity separate to its shareholders and directors.

It is possible to change the legal form of the business later on but such changes may be disruptive and expensive to implement and may also have some tax costs.

Sole Trader

There are no legal formalities involved in operating as a sole trader and you will be regarded as a self-employed individual. Further, there are no public disclosure requirements in respect of the business. You will, however, be personally exposed for any losses incurred by the business.

Partnership

Where two or more self-employed persons set up a partnership, it is advisable to draft a formal partnership agreement which would include details of capital to be provided by each partner, profit sharing ratios, steps to be taken on the introduction of new partners or retirement on existing partners, voting rights of the partners, an outline of how the business is to be run etc.

Each partner of the business is personally liable for the losses of the partnership even if these are caused by other partners.

Limited Liability Company

The main advantage of incorporation is that of limited liability equal to the amount subscribed for in respect of the shares. The formation of a company will require you to choose a company name, draft appropriate Memorandum and Articles of Association, file the appropriate documents with Companies Registration Office. If you are going into practice with one or more persons and you decide to incorporate, it is advisable to draft a shareholders' agreement which should cover some or all of the following matters:

1 The amount to be subscribed for shares or the level of shareholder loans

2 Directors' fees and salaries
3 Voting rights
4 Pre-emption rights in respect of shares should a shareholder decide to exit
5 Steps to be taken on the introduction of new shareholders
6 The division of responsibilities between directors

Having a limited liability company may provide some planning opportunities e.g. personal pension planning but the application of the close company surcharge to service companies may increase the effective rate of corporation tax. Remuneration will mainly be in the form of salary on which PAYE / PRSI should be operated at the time of payment. This should remove the pressure of having to put aside monies to fund preliminary tax obligations in October / November of each year.

The disadvantages of incorporation include:

1. Some set up costs will be incurred
2. There are annual filing requirements with the CRO, e.g. Form B1
3. An annual audit will be necessary if turnover is greater than €7.3 million or the balance sheet is more than €3.65 million or the number of employees is greater than 50.

If you require assistance with the registration process and/or company secretarial matters, you might consider using a professional services firm or a company formation agent.

Further information as to the CRO obligations for small companies can be found at www.cro.ie.

The Institute of Chartered Secretaries and Administrators, while based in the UK, provides a wealth of information on regulatory bodies and corporate governance worldwide.
http://www.icsa.org.uk